

Possible Alternatives to Guardianship of a Minor

WARNING: THE FOLLOWING INFORMATION IS OF A GENERAL NATURE ONLY, AND IS NOT DESIGNED TO PROVIDE LEGAL ADVICE SPECIFIC TO ANY INDIVIDUAL OR CASE. IT CAN SERVE AS A GUIDE, BUT DOES NOT TAKE THE PLACE OF PRIVATE LEGAL ADVICE. MANY COUNTIES HAVE LEGAL AID PROGRAMS FOR THE INDIGENT, OR LIMITED MEANS PANELS FOR MODERATE INCOME PEOPLE WHO MAY NEED A PRIVATE ATTORNEY. OTHER PROGRAMS MAY BE AVAILABLE WHERE YOU CAN GET LIMITED ASSISTANCE OR REPRESENTATION FROM AN ATTORNEY ON AN “UNBUNDLED” OR “TASK-BY-TASK” BASIS, PAYING ONLY FOR THOSE SERVICES IN WHICH YOU REQUIRE ASSISTANCE AND DOING THE REST YOURSELF. CALL YOUR LOCAL BAR ASSOCIATION TO FIND OUT ABOUT AVAILABLE PROGRAMS IN YOUR COUNTY TO HELP YOU GET PRIVATE LEGAL ADVICE.

WHAT IS GUARDIANSHIP?

A **guardianship** is where the court orders a non-parent to take care of a minor child. A guardianship can be for the minor’s **person** and/or **estate**. When

you are appointed guardian of a minor you must serve as guardian until you are legally released by the court from your duties or the minor reaches age 18.

Guardianship of the **person** means taking care of the minor's physical needs such as food, clothing and shelter. Guardianship of the **estate** means taking care of the minor's assets, such as money, property or things of value. **If the minor has assets you need to get help from a private attorney.** The duties a guardian of the estate owes to the minor regarding how the minor's money is to be handled are called **fiduciary** duties. These are the highest duties the law recognizes and require a professional level of knowledge and expertise.

HOW DO I KNOW IF I NEED TO GET A GUARDIANSHIP?

Before you decide if a guardianship is what you need, consider the following options:

- **A Caregiver's Authorization Affidavit**
- **Power of Attorney (Minor Child)**

These documents may provide you with the limited power to take care of the minor child when the following apply:

- ✓ ☐ You only plan to take care of a minor for a short period of time, maybe up to one year.
- ✓ ☐ You are related to the minor and the parents will allow you to enroll their child in school and approve medical attention.
- ✓ ☐ You are planning to move out of the State of California with the minor child and intend to apply for a guardianship in the other State.

If any of these statements apply you might consider using a **Caregiver's Authorization Affidavit** or **Power of Attorney** instead of a guardianship. It is always best to consult with a private attorney before you decide. The following instructions show how to complete a caregiver's authorization affidavit power of attorney (minor child).

CAREGIVER'S AUTHORIZATION AFFIDAVIT

Caregiver's Authorization Affidavits authorize an unrelated caregiver 18 years of age or older who lives

with the minor child, to enroll the minor in school and consent to school-related medical care on behalf of the minor. It does not allow the unrelated caregiver to authorize non-school-related medical treatment.

Caregiver's who are **relatives** and complete the affidavit have the same rights to authorize all medical care and dental care for the minor that are given to **guardians** under Probate Code §2353.

The affidavit is only valid for up to one year from the date on which it is signed.

TO LEARN ABOUT “POWER OF ATTORNEY” (MINOR CHILD) [CLICK HERE](#) (LINK TO POWER OF ATTORNEY)

HOW TO COMPLETE THE “CAREGIVERS AUTHORIZATION AFFIDAVIT”

The following is a sample Caregiver's Authorization Affidavit form. You can use this form anywhere within the State of California. It is **not** a court form and does not get filed with, or issued by, the court.

Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5-8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor:_____.
2. Minor's birth date:_____.
3. My Name (adult giving authorization):_____.
4. My home address:_____

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5. () I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back page of this form for a definition of "qualified relative").
 6. Check one or both (for example, if one parent was advised and the other cannot be located.)

() I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.
() I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.
 7. My date of birth:_____
 8. My California Drivers license or identification card number;
_____.

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated_____ **Signed**_____

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.

2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. “Qualified relative,” for purposes of item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.
2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor. If you have any questions please contact your local Department of Social Services.
3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit.
4. If you do not have the information requested in item 8 (California driver’s license or I.D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS:

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.
2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver’s authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.
3. This affidavit does not confer dependency for health care coverage purposes.

1. Use the above blank affidavit form or obtain one from your local social services agency. Some courts have self-help centers that may have copies of the form, or local non-profit legal aid providers may have them as well. Make sure to read the “**notices**” on the back of the form before completing it.
2. On your copy of the form, type or neatly print (black ink only) the following:
 1. **Name of Minor**
 2. **Minor’s date of birth**
 3. **Your name**
 4. **Your home address**
 5. **Check (✓) the box in item 5 if it is true**
(If it is not, you may not be able to use this form. You should seek legal advice from a private attorney.)
 6. **Check the statement(s) that apply**
 7. **Your date of birth**
 8. **Your California drivers license number, or California identification number**

This form is complete and ready for use. Keep a copy of both sides so you can refer to it in the future.

POWER OF ATTORNEY (MINOR CHILD)

A Power Of Attorney assigns rights to a third party by a parent for the care and custody of the minor. Powers normally given by the parent to the third party include authority to:

- ✓ Give medical consent
- ✓ Enroll in school
- ✓ Take all acts necessary on behalf of the minor.

A power of attorney is revocable at any time by a parent. For this reason sometimes a school and/or medical provider will want **more** than the authority of a power of attorney. It is always best to consult with a private attorney before you decide to use this form.

HOW TO COMPLETE THE “POWER OF ATTORNEY” (MINOR CHILD)

The following power of attorney form can be used:

**POWER OF ATTORNEY
(MINOR CHILD)**

I, _____,

do hereby affirm that I am the parent/legal guardian of

_____ born _____,
_____ born _____,
_____ born _____,

minor child/children, and as such parent/legal guardian I do hereby make,

constitute and appoint _____

my full and lawful attorney in fact, for me in my name and to do any and all of the following:

1. To give consent for any and all medical treatments, dental treatments, cosmetic treatments, surgical procedures, physical therapy, psychiatric treatments, hospitalization or laboratory procedures that may be administered or proposed to be administered to said minor(s) whether emergency or routine, under the direction of a licensed physician or surgeon; and to sign any and all consent forms required for any and all proposed procedures, physical therapy, psychiatric treatments, hospitalization, or laboratory procedures that may be administered or proposed to be administered to said minor(s);
2. To enroll said minor(s) in any school, nursery school, playgroup, camp or daycare center.

(Power of Attorney)

(Page 1 of 2)

IN WITNESS WHEREOF, I have signed and acknowledged
the Power of Attorney this _____ day of _____ 20____

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

WITNESS my hand and official seal.

(Power of Attorney)
(Page 2 of 2)

The following instructions show how to complete the above power of attorney (minor child) form:

1. Use the above blank power of attorney form or obtain one from your local social services agency. Some courts have self-help centers that may have copies of the form, or local non-profit legal aid providers may have them as well.
2. On your copy of the form type or neatly print (black ink only):
 1. **Your name**
 2. **Your child's name and birth date**
 3. **The name of the person who will have care of your child or children**

WARNING: The rest of the form must be completed in the presence of a notary public. The following information you will provide with the notary public present:

4. **The day you sign the form**
5. **The month you sign the form**
6. **The year you sign the form**

- 7. Your signature in the presence of a notary**
- 8. Notary Public completes this section**

The form is complete and ready for use. It is always best to consult with a private attorney before using this form.